

FILED

JUL 27 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERNEST TREVINO,

Defendant - Appellant.

No. 05-10622

D.C. No. CR-89-00150-7-EJG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Edward J. Garcia, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Ernest Trevino appeals pro se from the district court's denial of his motion to reconsider the denial of his 18 U.S.C. § 3582(c)(2) motion to reduce his sentence. The district court imposed a 375-month prison sentence following

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Trevino's conviction for conspiracy to manufacture methamphetamine and manufacturing methamphetamine. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion, *see United States v. Hobbs*, 31 F.3d 918, 923 (9th Cir. 1994), and we affirm.

Trevino contends that the district court erred in finding that the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), did not authorize the court to reduce his sentence pursuant to § 3582(c)(2). By its terms, § 3582(c)(2) authorizes a district court to reduce a sentence only when the applicable sentencing range has been lowered by the Sentencing Commission. *See United States v. Townsend*, 98 F.3d 510, 513 (9th Cir. 1996) (per curiam). Because the range applicable to Trevino's sentence has not been lowered by the Sentencing Commission, the district court did not err in refusing to reconsider its decision not to modify Trevino's sentence pursuant to § 3582(c)(2). *See id.* (affirming the denial of a motion to modify sentence when the guideline amendment at issue had no effect on the defendant's sentencing range).

AFFIRMED.